

## The Reasonable Consumer Defense: Vanilla Cases Show It's Here to Stay in Food Litigation

Food litigation filings have risen significantly in the recent past. According to [data collected](#) by Perkins Coie, even with the pandemic, filings targeting the food and beverage industry have seen record levels in 2020 and 2021. But these filings face a formidable obstacle: the reasonable consumer defense. Courts continue to apply the "reasonable consumer" standard to reach early dismissals in cases positing implausible theories as to how consumers actually read and understand the labels of consumer-packaged goods. The reasonable consumer defense remains an important check on the rising number of food litigation matters filed across the country. As the Ninth Circuit Court of Appeals recently [noted](#), "a reasonable consumer does not check her common sense at the door of the store." Recent cases involving vanilla illustrate how courts across the country reason with the "reasonable consumer" standard. These cases generally allege that a "reasonable consumer" expects that a product labeled as flavored with vanilla (*e.g.*, vanilla ice cream or vanilla soy milk) derives its flavor exclusively from pure vanilla or vanilla extract. The nation's courts have seen over 120 new suits based on this theory since 2019. But recent decisions in New York and California federal courts show federal courts are growing increasingly impatient toward the tide of vanilla litigation. Most courts have concluded that no "reasonable consumer" is misled by a claim indicating that a product is flavored with vanilla when that product, in fact, tastes like vanilla. Relying on common sense, these courts have repeatedly held that when consumers read vanilla on a product label, they understand it to mean the product has a certain taste, not that it is derived exclusively from vanilla beans. *See, e.g., Steele v. Wegmans Food Mkts., Inc.*, 472 F. Supp. 3d 47, 50 (S.D.N.Y. 2020); *Clark v. Westbrae Natural, Inc.*, 2020 WL 7043879 (N.D. Cal. Dec. 1, 2020); *Pichardo v. Only What You Need, Inc.*, 2020 WL 6323775, at \*5 (S.D.N.Y. Oct. 27, 2020); *Parham v. Aldi, Inc.*, No. 19 CIV. 8975 (PGG), 2021 WL 4296432, at \*4 (S.D.N.Y. Sept. 21, 2021). In consumer class action matters generally, and food litigation matters specifically, the reasonable consumer defense is often dispositive. The outcome of vanilla-related lawsuits demonstrate that the reasonable consumer defense is here to stay, presenting an important check on rising food and beverage litigation.

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